IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) Nos.2691 and 2692 of 2006

Commissioner of Income Tax,
Chennai. ..Appellant in both T.Cs.

Vs

R.Rajinikanth ..Respondent in T.C.2691/06

M/s.R.K.Exports,
19A, Akbarabad II St.,
Kodambakkam, Chennai.24. ..Respondent in T.C.2692/06

Appeals filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, 'B' & 'A' Bench, Chennai, dated 12.5.2006 passed in I.T.A.Nos.1629 and 1628/Mds/2002 for the assessment years 1994-95 and 1998-99 respectively. against the order of the Commissioner of Income Tax (Appeals) VI, 121, Mahatma Gandhi Road, Chennai 600 034 dated 23.7.2002 and made in ITA.Nos.47 & 48/2002 - 03. against the order of the Asst Commissioner of Income Tax, Media Circle II, Chennai 34 dated 26.3.2002 made in PA.No/GIR.No.10798-R & 10327-R for the Assesment year 1994 - 95 & 1998-99.

For Appellant : Mr.J.Narayanaswamy

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the common order of the Income-tax Appellate Tribunal in I.T.A. No.1629 and 1628/Mds/2002 dated 12.5.2006.

2. The Revenue is the appellant. During the relevant assessment years, viz., 1994-95 and 1998-99, the respective assessees claimed deduction under Section 80 HHC in respect of export of film prints to foreign enterprises. Initially, the claim

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of the assessees was allowed, but on re-opening the assessment, the assessing officer withdrew the deduction on the basis of the order of the Tribunal that the sale of rights does not mean that goods have been exported out of India. Against the said orders of the assessing officer, the assessees preferred appeals before the Commissioner of Income-tax (Appeals), who allowed the appeals, against which, the Revenue filed appeals before the Income-tax Appellate Tribunal and the Tribunal also held the issue in favour of the assessee. Hence, the present tax case appeals by the Revenue raising the following common substantial questions of law:

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in treating the transfer of the right to exhibit the films, as a sale of goods or merchandise for the purpose of deduction under section 80 HHC ?
> 2. Whether in the facts and circumstances of the case, a transaction for transfer of exploitation rights, entered into in India can be eligible for the benefit of sec.80HHC only because the consideration was received in foreign exchange ?"

3. Mr.J.Narayanaswamy, learned standing counsel appearing for the Revenue, fairly submits that the issues raised in the above questions of law are squarely covered against the Revenue by the decision of this Court in COMMISSIONER OF INCOME-TAX v. V.C.KUGANATHAN dated 31.10.2006 (T.C.Nos.224 of 2003, etc. batch).

4. In the said decision, this Court, agreeing with the views taken by the Bombay High Court in Abdulgafar A.Nadiadwala Vs. Dy.CIT [(2004)267 I.T.R. 488], as well as applying the principle laid down by the Apex Court in Tata Consultancy Services Vs. State of Andhra Pradesh (271 ITR 401), with regard to considering the scope of the word "goods", while observing that exporting the right for exhibition of positive print is nothing but sale of goods or merchandise, held that the assessee therein had satisfied the conditions contemplated under Section 80HHC of the Act and hence, entitled for the deduction under Section 80HHC of the Act.

5. In view of the above settled proposition of law, we do not see any merit in the above tax case appeals and hence, the same are dismissed. No costs. Consequently, M.P.No.1 of 2006 in T.C.(A) No.2691 of 2006 is also dismissed.

sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Asst Registrar,
Income Tax Appellate Tribunal,
IIIInd floor, Rajaji Bhavan, Chennai 90.

2. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "B".

3. The Asst Registrar,
Income Tax Appellate Tribunal Chennai Bench "A"
Chennai.

4. The Commissioner of Income Tax
(Appeals) III, Chennai.34.

5.The Assistant Commissioner of
Income-tax, Media Circle-II
Chennai.34.

6. The Commissioner of Income Tax, Chennai.

+ 2 ccs to M/s. Pushya Sitaraman, Advocate SR No. 736 & 740

PV(CO)
SR/23.1.2007

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of 2006

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